

PLANNING DEPARTMENT

The 24th November, 1970

No. 41(11)-2Pg(H)-68/33254.—Sarvshri Madan Lal Nagpal, Ram Lal Setia, Radhey Sham Gupta and Balbir Singh appointed as Research Officers/District Statistical Officers in the Economic and Statistical Organization, Haryana,—vide Haryana Government Planning Department Memo Nos. 41(11)-2Pg(H)-68/18278, dated 9th July, 1970 and 41(11)-2Pg(H)-68/18273, dated 9th July, 1970 have assumed their duties with effect from the dates mentioned against each :—

Name and Designation

Dates

1.	Shri Madan Lal Nagpal, Research Officer	14th August, 1970
2.	Shri Ram Lal Setia, Research Officer	18th August, 1970
3.	Shri Radhey Sham Gupta, Research Officer	1st September, 1970
4.	Shri Balbir Singh Kataria, Research Officer	8th September, 1970

G. V. GUPTA, Jt. Secy.

LABOUR DEPARTMENT

The 20th November, 1970

No. 11009-ILab-70/34088.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award given by the Presiding Officer, Industrial Tribunal Haryana Faridabad, in respect of the dispute between the workmen and the management of M/s Swatantar Bharat Woollen Mills Panipat.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 13 of 1970

between

Shri Om Parkash workman and the management of M/s Swatantar Bharat Woollen Mills, Panipat.

Present :—

Shri Raghbir Singh, for the workman.

Shri Roshan Lal Gupta, for the management.

AWARD

Shri Om Parkash was working as a Condenserman in M/s. Swatantar Bharat Woollen Mills, Panipat. His services were terminated on the ground that he became surplus. The workman is aggrieved by reason of the termination of his services and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes to this Tribunal, for adjudication,—vide Government Gazette Notification No. ID/1693, dated 22nd January, 1970.

Whether the termination of Shri Om Parkash Condenserman is justified and in order 7 If not, to what relief he is entitled ?

On receipt of the reference, usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. It was pleaded on behalf of the management that Shri Om Parkash was engaged as a helper and a trainee condenserman on temporary basis and he was to be employed as a condenserman on a new card which was to be erected but due to the non-availability of the raw-material the new card could not be erected

and as such Shri Om Parkash was rendered surplus. The workman did not admit the correctness of these allegations. On the contrary it is pleaded on his behalf that he was employed as a condenser man on permanent basis at Rs. 125/- per mensem and it is denied that he became surplus. The pleadings of the parties gave rise to the following issues.

1. Whether Shri Om Parkash was engaged as a helper and trainee condenser man on temporary basis for being deputed as a condenser man on a new card under erection in July, 1970?
2. Whether due to non availability of raw-material the new card could not be worked and as such Shri Om Parkash was rendered surplus?
3. Whether the termination of Shri Om Parkash condenser man is justified and in order? If not, to what relief he is entitled?

On behalf of the management Shri Brij Mohan Sharma, Manager alone appeared. The workman has produced four witnesses in support of his case. I have carefully gone through the evidence and heard their learned representatives. My finding are as under:—

Issue No. 1.—Shri Brij Mohan Sharma M. W. 1 Manager of the respondent factory stated that the management wanted to set up a new card and the applicant Shri Om Parkash was appointed on 8th July, 1969 as a trainee condenser man with the object that he will work as a condenser man on the new card as and when it was set up. Shri Brij Mohan states that the work on the new card could not start because the clothing was not available and for this reason the applicant Shri Om Parkash became surplus and a notice dated 22nd September, 1969 marked Ex. M.W. 1/1 was given to him. Shri Brij Mohan further states that the applicant Shri Om Parkash was re-appointed on temporary basis for a period of one month because they need a helper for the erection of a machine and after the expiry of this period his services automatically came to an end. The witness brought the attendance register in order to show that no workman junior to the applicant Shri Om Parkash had been retained in service.

In rebuttal the applicant Shri Om Parkash has appeared as a witness and has been examined as W.W. 1. He also produced Shri Ram Singh W.W. 2, Mule Spinner and one Shri Lajpat W. W. 3 in support of his version that he was not appointed as a trainee but he was appointed on permanent basis. According to the workman the question of appointing him as a trainee did not arise because he was fully trained previously, he was doing this very work in M/s Notional Industrial Corporation, he further says that the management after terminating his services without any justification appointed Shri Lajpat in his place but he too was changed and one Shri Sulta Ram was appointed and after Sulta Ram one Rattana Ram was kept in his place. Both Shri Ram Singh W. W. 2 Mule Spinner and Shri Lajpat W. W. 3 have corroborated this version.

During the course of argument the learned representative of the management pointed out that only one card was working in the respondent factory for which they already had condenser man on permanent basis and therefore the question of appointing the applicant Shri Om Parkash as a condenser man on permanent basis could not arise. The position taken up by the learned representative of the workman is that two condensers men are required to work on one card and therefore the position taken up on behalf of the management was not tenable. The first question which therefore requires determination is whether one condenser man is required to work on a card or it is necessary to have two condensers men. The parties had not produced any evidence on this point. The learned representative of the management suggested that the working of the factory of the respondent could be inspected in order to ascertain this fact. Arguments were being heard in Panipat and it was stated that the card was working at that very time the arguments were being heard and a physical check could be made as to whether two condensers men were working on the card or whether there was only one condenser man. The learned representative of the workman accepted this suggestion and at the request of the parties the respondent factory was inspected on that very day at 4.45 p.m. but unfortunately just at that time the electric power failed and the machine stopped working and therefore no physical check could be made of the fact whether two condensers men were working on the machine or not. Later on when the power was restored it was stated by the representative of the workman that the inspection would not now serve any useful purpose because the management would not now put two condensers men on the machine. He suggested that the persons who were actually working on the card may be examined in order to ascertain as to whether two condensers men were actually working on the machine or not. This suggestion was also accepted and at the request of learned representative of the workman one more witness namely Shri Bhartu Ram W.W. 4 was examined. The supplementary statement of Shri Brij Mohan Manager of the respondent company was also recorded.

Shri Bhartu Ram has corroborated the version of the workman, he says that workmen are required to work on a card and that three workmen were actually working on the card till 4.30 p. m. i.e. till the time the machine was working. Shri Bhartu Ram stated that one of the workmen was Shri Jia Lal, the

other workman whose duties it was to work on this card was Shri Mahi Ram but he was on leave and in his place one Shri Dasu was working and Master Om Parkash was himself working in the place of third man.

Since the respondent factory is working in two shifts, the witness was asked to name the three persons who work on the card in the second shift. The witness stated that Sarvshri Rattan Lal, Telu Ram and Guranditta work in the second shift.

In order to rebut the evidence of the workman, the Manager Shri Brij Mohan in his supplementary evidence has stated that the management have installed an automatic feeder and therefore three workmen are not required to work on the card and two workmen can serve the purpose. He has explained that in the night shift Shri Rattan Lal works as a condenser man and Guranditta is a feeder coolie and as regards Telu Ram the witness explained that he is a card Supervisor and not the Condenser man and he looks after the working of the whole of the factory during the night because the general foreman works during the day only and his services are not readily available during the night. The representative of the management explained that the witness have named persons who are on general duty in the factory and not the persons who work on the card.

After carefully considering the evidence of the parties, I am of the opinion that the workman has not been able to satisfactorily establish that the three workmen are required to work on a card in the respondent factory. The Manager of the respondent factory has rightly explained that a automatic feeder has been installed on the card and it has not been explained what duty is actually performed by the third workman on a card on which an automatic feeder is installed. Under these circumstances, it is not possible to the version of the workman that he was appointed on permanent basis. It appears that the version of the management that Shri Om Parkash was appointed as a condenser man in the hope that the 2nd card would start working and he would be put on that card is correct. I therefore, find this issue in favour of the management.

Issue No. 2.—Shri Brij Mohan Sharma, M. W. 1, Manager of the respondent concern has stated that the second card could not start working because the clothing was not available. The correctness of this version of the management has not even been challenged in cross-examination and no evidence in rebuttal has been produced by the workman. I therefore find this version also in favour of the management.

Issue No. 3.—In view of my findings on issues Nos. 1 and 2, this issue does not arise and I hold that the termination of the services of the applicant Shri Om Parkash was unjustified and he is not entitled to any relief. I give my award accordingly. No order as to cost.

Dated : 16th November, 1970.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1458, dated the 2nd November, 1970.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated : 16th October, 1970.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11007-A-I-Lab-70/34090.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workman and the management of M/s Raj Woollen Industries Panipat.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 39 of 1970

between

SHRI JAI PAL, WORKMAN AND THE MANAGEMENT OF M/S RAJ WOOLLEN
INDUSTRIES, PANIPAT

Present.—

Shri Raghubir Singh, for the workman.

Shri Roshan Lal Gupta, for the management.

AWARD

Shri Jai Pal was employed as a Spinner in M/s. Raj Woollen Industries, Panipat. According to the management he was on probation and his work was not satisfactory and so his services were terminated. The workman is aggrieved by reason of the termination of his services and this gave rise to an industrial dispute. Accordingly, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal, for adjudication,—*vide* Government Gazette Notification No. ID/6080, dated 4th March, 1970.

“Whether the termination of services of Shri Jai Pal, Spinner is justified and in order? If not, to what relief he entitled?”

On receipt of the reference, usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. The case of the workman is that he was appointed as a Spinner on Rs. 125/- P. M. on permanent basis. He says that no letter of appointment was given to him and the management terminated his services on 1st October, 1962 without giving him any notice to show cause and in reply to his letter of protest the management intimated to him that his work was not satisfactory. According to the workman his work was quite satisfactory and the termination of his service is wrongful.

The management raised the preliminary objection that the order of reference is illegal and is also not covered by the provisions of section 2 A of the Industrial Disputes Act because the aggrieved workman himself never raised any demand with the management and the present reference is an out come of a notice of demand given by Shri Raghbir Singh, Secretary Engineering and Textile Workers Union, Panipat, in his individual capacity and not as a result of espousal by the union or a substantial number of workmen. In order to dispose of this preliminary objection, the following two issues were framed:—

1. Whether the reference is invalid because the demand notice was given by Shri Raghbir Singh on his own behalf and not as a result of espousal by the union or other workmen?
2. Whether the reference is not covered by section 2A of the Industrial Disputes Act because the workman himself never raised the dispute?

After hearing the learned representatives of the parties, it was held,—*vide* the order of this Tribunal, dated 12th May, 1970 which is annexure ‘A’ to this award that the order of reference was valid and there was no substance in the preliminary objections raised on behalf of the management. On merits the only issue which arose from the pleadings of the parties was precisely the same as in the order of reference. The parties were given an opportunity to produce evidence in support of their respective contentions. The management have examined Shri Deepak Nath, M.W. 1, partner of the respondent concern. Shri Deepak Nath has proved the letter of appointment Ex. M. W. 1/1, dated 9th June, 1969 in order to prove that the workman was appointed on probation for the period of six months and not on permanent basis as stated by him and in accordance with the terms of the letter of appointment his services could be terminated at any time during the period of probation. Shri Deepak Nath has also proved the letter copy Ex. M.W. 1/2 by which the workman was warned that his production was not up to the mark and he should improve his work. It is urged that the service of the workman was terminated strictly in accordance with the terms of his letter of appointment because his work was not satisfactory and there was no victimisation or unfair labour practice,

In rebuttal Shri Jai Pal workman in his evidence has stated that he was a fully trained workman and he was appointed on permanent basis at Rs. 125/- P. M. and that raw hands are not employed at Rs. 100/- P. M. only. He says that his co-workers were untrained and the management weighed their production jointly with his production but whenever his individual production was weighed it was always found to be above normal. The workman says that the management became annoyed with him and terminated his services because he asked that his wages may be increased to Rs. 140/- P. M. It may be stated at the very outset that it is not possible to accept the version of the workman because this version does not find any place either in the notice of demand or in the statement of claim or in reply to the rejoinder filed by the respondent management and they had no opportunity to rebut this assertion.

The version of the management that the services of the workman were terminated in accordance with the law is also not correct. According to the terms of the letter of appointment the management is given a right to terminate the services of the workman “at any time during probation without assigning any reason”. The learned representative of the management during the course of arguments frankly conceded that under the industrial law the management does not have an unrestricted right to terminate the services of their workmen without any reason what so ever and the services of a workman even during the period of probation can be terminated without giving him a show cause notice only if his work is not satisfactory that is if a probationer is charged with mis-conduct the management have to hold an enquiry before terminating his services. The learned representative of the management submitted that the words “without assigning any reason” occurring in the letter of appointment should be considered as superfluous and deleted and it would then mean that the management had a right to terminate the services of the workman at any time during the period of his probation, if his work was not found satisfactory.

I am afraid it is not possible to accept this contention and to read only a part of the condition of the letter of appointment and to uphold that the order of the management terminating the services of the workman is justified. It has been held by the Supreme Court in Express Newspaper case reported in 1964-I-LLJ-9 that without anything more an appointment on probation for six months gives the employer no right to terminate the services of an employee before six months had expired except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated. At the end of the six months period the employer can either confirm him or terminate his services, because his service is found unsatisfactory.

In the present case we find that the workman was not given a proper opportunity to show his worth. Shri Deepak Nath M. W. 1, Partner of the respondent Mills states in evidence that Shri Jai Pal had experience of working on country made machines only while they have imported machines and Shri Jai Pal was employed in the hope that he would pick up work but he could not. It is not possible to accept this version. If Shri Jai Pal was really a novice and had no experience of working on imported machines as stated by Shri Deepak Nath, M. W. 1, and he was employed in the hope that he would pick up work then the management should have given him adequate opportunity to pick up work. We have already seen that Shri Jai Pal was appointed on probation for a period of six months. This means that at the time he was taken into service the management thought that about six months would be required to enable him to pick up work on their imported machines but without giving him adequate time to pick up work the management gave a letter of warning copy marked Ex. M. W. 1/2 to Shri Jai Pal and some other workmen in which it is stated that the workmen concerned had been in the service of the respondent for about a month and a half and during this period they should have acquired sufficient proficiency in the working on the machines but their production was not satisfactory and therefore they were being given an other chance to improve their production within a month otherwise their services would be terminated. This letter of warning clearly shows that apart from less production there was no other fault in the work of the workmen concerned and the management was in no mood to allow them to complete even their period of probation before deciding as to whether their work would come upto the mark. This action on the part of the management was against the spirit of the terms and conditions contained in the letter Ex. M. W. 1/1, and cannot therefore be up held.

As regards the relief to which the workman is entitled, the management have examined Shri Brij Mohan. Manager of the Haryana Woollen Mills, Shri Brij Mohan states that Shri Jai Pal workman is in their service with effect from 23rd October, 1969 and he is being paid Rs. 125/- per month that is exactly the same salary which the workman was getting from the respondent. In cross-examination it was suggested to the witness that they are in fact paying the workman only Rs. 100/- per month but are getting a receipt for Rs. 125/-. This suggestion also does not appear to be correct. At any rate the workman is not bound to give a wrong receipt and in my opinion after taking into consideration all the circumstances of the case, it would not be in the interests of justice to uproot the workman from his present job and reinstate him to his former job where his employer for some reason or other was not happy with him. I think under the circumstances of the case a token compensation of Re. 300/- for wrongful termination of service will meet the ends of justice. I give my award accordingly. No order as to cost.

Dated : 25th October, 1970.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1459, dated the 2nd November, 1970.

Forwarded (four copies) to the Secretary to the Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 25th October, 1970.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 39 of 1970

between

SHRI JAI PAL WORKMAN AND THE MANAGEMENT OF M/S RAJ WOOLLEN INDUSTRIES
PANIPAT

Present :

Shri Raghubir Singh, for the workman.

Shri Vishwa Nath, for the management.

ORDER

Shri Jai Pal was working as a Spinner with M/s Raj Woollen Industries Panipat. His services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of Sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal, for adjudication,—vide Government Gazette Notification No. 10/6082, dated 4th March, 1970.

Whether the termination of services of Shri Jai Pal Spinner is justified and in order? If not, to what relief he is entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. A preliminary objection has been raised by the management that the present reference is an out come of a demand notice made by Shri Raghbir Singh on his own behalf and not as a result of espousal by the union or other workmen as is evident from the notice of demand itself. It is also pleaded that the reference is not covered by section 2A of the Industrial Disputes Act because the workman never himself raised any demand with the management. The following preliminary issues were framed in order to dispose of these objections.

1. Whether the reference is invalid because the demand notice was given by Shri Raghbir Singh on his own behalf and not as a result of espousal by the union or other workmen?
2. Whether the reference is not covered by section 2A of the Industrial Disputes Act because the workman himself never raised the dispute?

Issues Nos. 1 and 2.—I have heard the learned representatives of the parties and have carefully considered their submissions. In my opinion there is no force in the submission of the learned representative of the management that the demand notice has been given by Shri Raghbir Singh Secretary of the Engineering and Textile Workers Union Panipat on his own behalf and not on behalf of workman and that the workman has not raised the dispute. It is true that in the demand notice Shri Raghbir Singh does not say in so many words that the notice of demand was being given by him on behalf of the workman but the note under the demand notice shows that 5 copies of the notice of demand alongwith the letter of authority from the workman was sent to the Conciliation Officer Karnal. This means that in substance that Shri Raghbir Singh had given the notice on behalf of the workman and he had also obtained a letter of authority from him. In my opinion the objections of the management are highly technical and there is no substance in them. I find both these preliminary issues in favour of the workman.

On merits the only issue which arises from the pleadings of the parties is precisely the same as in the order of reference. The case to come up for evidence of both the parties on 13th July, 1970 at Panipat.

Dated the 12th May, 1970.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9952-1Lab-70/34230.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Municipal Committee, Hissar.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 88 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S. MUNICIPAL COMMITTEE, HISSAR

Present.—

Shri Rachpal Singh, for the workmen.

Shri Suraj Bhan, Secretary for the management.

AWARD

Sarvshri Raj Kumar Chaudhary, Rulia Ram, Chander Singh and Raj Kumar were employed as Tubewell Drivers in the Municipal Committee, Hissar. They were retrenched from service on the ground that they had become surplus. They were aggrieved by reason of the termination of their services and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal, for adjudication,—vide Government Gazette Notification No. ID/11513, dated 20th April, 1970.

Whether the termination of services of Sarvshri Raj Kumar Chaudhary, Rulia Ram, Chander Singh and Shri Raj Kumar Tubewell Drivers is justified and in order? If not to what relief are they entitled?

On receipt of the reference usual notices were issued to the parties in response to which the management filed their written statement in which two preliminary objections were raised. It was pleaded that the Committee was not running the Tube Wells for any monetary gain and therefore it was not an industry and the aggrieved workmen did not fall within the definition of a workman and had no *locus standi* to raise any industrial dispute because their services had been terminated in accordance with the provisions of section 45 (1) of the Punjab Municipal Act, 1911 and this Tribunal had no jurisdiction to interfere with the action of the committee. Both these objections were decided in favour of the workmen,—vide the order of this Tribunal, dated 2nd July, 1970, which is annexure A of this award. On merits it is pleaded that Sarvshri Raj, Kumar Chaudhary, Rulia Ram Chander Singh and Raj Kumar, Tube Well Drivers were employed with effect from 31st December, 1961, 7th July, 1966, 15th June, 1962 and 16th July, 1959 respectively. Regular water supply from water works was started from June, 1969 with the result that some of the tube wells had to be closed and the services of the aggrieved workman along with some others became surplus and they were accordingly retrenched from services after taking into consideration their seniority. It is alleged that all of them have been given one month's notice.

The only issue which arose from the pleadings of the parties was precisely the same as in the order of reference. The parties were given an opportunity to produce their evidence. Shri Suraj Bhan Secretary of the respondent Committee has appeared as a witness and has stated that prior to June, 1969 water was supplied free of cost to the public from the Tube Wells but water works was started from June, 1969 and for this reason eleven tubewell drivers became surplus. He stated that three of them were previously working as peon and they were reverted to their original posts and the remaining eight tube wells drivers were retrenched from service after notice under section 45 of the Punjab Municipal Committee had been served on them. In cross examination the witness admitted that no compensation as provided in section 25 F of the Industrial Disputes Act had been tendered to them and in view of this admission the workmen have not led any evidence in rebuttal and their learned representative has simply relied upon the authorities cited as 1967-II-LLJ-25, 1964-ILLJ 351 and 1969-ILLJ-373.

I have carefully considered the respective submissions of the learned representative of the parties and in any opinion the stand taken on behalf of the retrenched employees is correct. There is no denying the fact that provisions of clauses (a) and (b) of section 25 F of the Industrial Disputes Act are mandatory and it is incumbent on an employer to give one month's notice in writing indicating the reasons for retrenchment. It is also mandatory that the workmen should be paid at the time of retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service or a part thereof in excess of six months. The authorities on which reliance has been placed by the learned representative of the workmen fully support this view. The authority reported in 1964-I-LIJ 351 was given in the case of Bombay Union of journalists and the Supreme Court has been pleased to hold that the object which the legislature had in mind in making condition in clause (a), (b) obligatory and in constituting them into conditions precedent is obvious and these provisions have to be satisfied before a workman can be retrenched because the hardship resulting from retrenchment has been partially redressed by these two clauses and so there is every justification for making them conditions precedent but the same can not be said about the requirement as to clause (c) which simply requires that notice of retrenchment in the prescribed manner should also be sent to the appropriate Government or such authority as may be prescribed by the appropriate Government. It has been held that clause (c) is not intended to protect the workman as it is only intended to give intimation to the appropriate Government about the retrenchment and that only helps the Government to keep itself informed about the conditions of the employment in different industries within its region and therefore there does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (c) a condition precedent as in the case of clause (a) and (b). It has been observed that having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object for clause (c) were enacted it would not be unreasonable to hold that clause (c) unlike clauses (a) and (b) is not a condition precedent. The authority cited as 1967-II LLJ page 25 is to the same fact. In this case the employer gave a notice dated 15th November, 1958 to his workman informing him that his services stood retrenched with effect from 17th November, 1958 and he was asked to collect his dues and one month wages in lieu of notices on or after 20th November, 1958. The Industrial Tribunal held that the retrenchment was illegal.

as it was in violation of the provisions of section 25 F of the Industrial Disputes Act, On appeal their Lordships of the Supreme Court were pleased to uphold this order of the Tribunal on the ground that the provisions of section 25F of the Industrial Disputes Act had manifestly not been complied with under which it was incumbent on the employer to pay to the workman wages for the period of the notices in lieu of the notice. According to the view taken by their Lordships of the Supreme Court if the workman is asked to go forthwith, he has to be paid at the time he is asked to go and he can not be asked to collect his dues afterwards. 1969—II—LLJ 373 is an authority of the Madras High Court. In this case the post against which the workman was employed as a Khalasi in the Southern Railway Press came to an end and he was rendered surplus with effect from 22nd December, 1966 on account of the completion of the work and the expiry of the period for which the post had been sanctioned. A notice under section 25 F was accordingly given to him but he was paid retrenchment compensation only on 7th February, 1967. It was pleaded that the retrenchment effected without complying with the provisions of section 25 F would not be invalid because the services of the workman had automatically come to an end on the expiry of the period for which his post had been sanctioned. Negating this contention, it was held that the workman was not paid retrenchment compensation at the time of retrenchment i. e. on 22nd December, 1966 but was paid only on 7th February, 1967 therefore the services of the workman had not been validly retrenched in accordance with the law as interpreted by the Supreme Court and therefore the petitioner must be deemed to be in service.

In view of the authorities cited above I have no option but to hold that the retrenchment of the aggrieved workman is not valid and it must be held that they continue to be in the service of the respondent committee and are entitled to get their wages till their services are validly terminated in accordance with law, I give my award accordingly. No order as to cost.

The 6th November, 1970.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1531, dated 6th November, 1970

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 6th November, 1970.

P. N. THUKRAL,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 88 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S MUNICIPAL COMMITTEE, HISSAR

Present :—

Shri Rachpal Singh, for the workman.

Shri Chabil Dass, Chief Sanitary Inspector, for the management.

ORDER

Sarvshri Raj Kumar Chaudhary, Rulia Ram, Chander Singh and Raj Kumar, were employed as Tubewell Drivers by the Municipal Committee, Hissar. Their services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute to the Tribunal for adjudication,—vide Government Gazette Notification No. ID/11511, dated 20th April, 1970 :—his

“Whether the termination of services of Sarvshri Raj Kumar, Chaudhary, Rulia Ram, Chander Singh and Raj Kumar, Tubewell Drivers are justified and in order? If not, to what relief are they entitled?”

On receipt of the reference usual notices were issued to the parties in response to which the Municipal Committee have filed their written statement and the workmen have filed their reply. A number of preliminary objections have been raised on behalf of the committee. It is pleaded that in view of the recent judgement of Supreme Court given in Safdarjang Hospital case, the water works department of the Municipal Committee would not fall within the definition of the term industry and for this reason the reference is not valid. It is further pleaded that the Municipal Committee acts under the statutory provisions of the Punjab Municipal Act, 1911 and its action cannot be challenged in an Industrial Court. The following preliminary issues were framed in order to dispose of these preliminary objections :—

1. Whether the water department of the respondent committee does not fall within the definition of the term industry ?
2. Whether the action of the respondent committee in terminating the services of the claimant can not be questioned because of the provisions of section 45 of the Municipal Act.

Neither party has produced any evidence although an opportunity was given to them for the purpose. I have heard the arguments of the learned representatives of the parties and have carefully considered their submissions. My findings are as under :—

Issue No. 1.—The learned representative of the committee has relied upon the recent Supreme Court's decision given in Safdarjang Hospital case and reported in 1970 (1) Supreme Court cases-735. I have gone through this decision. In this case it is held that since the term industry means any business, trade undertaking, manufacture or calling of employers, hospitals which are not run on commercial lines would not be an industry. However the Supreme Court in the Corporation of City of Nagpur case and reported in 1960-I-LLJ-523 has been pleased to hold that the various departments of the City of Nagpur Corporation mentioned therein including Water Works Department was industry. This authority has not been over ruled. Even in Safdarjang Hospital case their Lordships of the Supreme Court have explained what is meant by the terms "material services" and have been pleased to observe that the "material services" involve an activity carried on through cooperation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephone and the like. It is, therefore, obvious that the Water Works Department of the Municipal Committee would fall within the definition of term industry. I, therefore, find this issue in favour of the workmen.

Issue No. 2.—The submission of the learned representative of the committee is that the workmen concerned became surplus and therefore their services have been simply terminated in accordance with the provision of section 45(1) of the Punjab Municipal Act, 1911 and this Tribunal has no jurisdiction to interfere with the action by the committee.

Section 45(1) of the Punjab Municipal Act, 1911 reads as under :—

"In the absence of a written contract to the contrary, every officer or servant employed by a committee shall be entitled to one months notice before discharge or to one month's wage in lieu thereof, unless he is discharged during a period of probation or for misconduct or was engaged for a specified term and discharged at the end of it."

It has not been explained how section 45(1) takes away the powers of the Industrial Tribunal to examine the legality of the termination of the services of workmen working in the Water Supply Department of the Committee. If the aggrieved workmen had become surplus then they could be retrenched from service after complying with the provision of section 25 F of the Industrial Disputes Act. The question whether the aggrieved workmen have been validly retrenched from service can only be decided after giving an opportunity to the parties to produce their evidence. No authority or law has been cited under which the Industrial Tribunal is debarred from adjudicating upon the validity of the termination of the services of an industrial worker. I, therefore, find this issue also in favour of the workmen.

The following issue on merits is framed.

Whether the termination of services of Sarvshri Raj Kumar Chaudhary, Rulia Ram, Chande Singh and Raj Kumar Tubewell Drivers are justified and in order. If not ; to what relief are they entitled ?

The case to come up for evidence on 19th August, 1970 at Bhiwani. Order announced to representative of the parties who are present.

Dated 2nd July, 1970,

(Sd.) , . . .

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.